DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 2 2 2005

200524035

SE:T:EP:RA:T3

Uniform Issue List 408.03-00

Legend

Taxpayer A	=	***
IRA B	=	***
Company C	=	***
Amount D	=	***
Country E	=	***
Account F	=	***
Date 1	=	***
Date 2	=	***
Date 3	=	***

Dear ***:

This is in response to your letter dated April 8, 2004 supplemented by your letters dated August 23, 2004, October 15, 2004 and February 9, 2005, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A has been a home health aid for nearly twenty years. In ***, she was laid off from her job when her employer died. In ***, Taxpayer A went to Country E to take care of her sister who was extremely ill. Prior to leaving for Country E, Taxpayer A met with a representative of Company C, the financial institution that held IRA B, an Individual Retirement Account ("IRA") described in Code section 408(a) maintained in the name of Taxpayer A. Taxpayer A explained to the representative of Company C that she was temporarily leaving the country and might need to have access to the funds in IRA B.

Taxpayer A asserts that when she met with the representative of Company C she informed the representative that she intended to roll over the funds upon her return from Country E.

On Date 1, Company C transferred Amount D to Account F, a Company C non-IRA account, in Taxpayer A's daughter's name. Taxpayer A asserts that Amount D was transferred to Account F to allow her daughter better access to the IRA funds should they be needed while Taxpayer A was in Country E. Amount D was the entire balance of IRA B. No federal income taxes were withheld when the transfer was accomplished. Taxpayer A asserts that Amount D was never used and currently remains in Account F.

Taxpayer A's sister died on Date 2. Taxpayer returned to the United States on Date 3, a date within the 60-day rollover period. However, subsequent to her return to the United States, Taxpayer A was treated for medical and emotional conditions that impaired her judgment to make financial decisions, including rolling Amount D over to another IRA. Shortly after the expiration of the 60-day rollover period, Taxpayer A attempted to transfer Amount D from Account F into a new IRA but Company C refused to authorize such a transfer because the 60-day rollover period had expired.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA B, because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA should be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if (i) The entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or (ii) The entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(I) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by Taxpayer A demonstrates that she returned from Country E on Date 3, approximately 3-4 weeks before the expiration of the 60-day period applicable to the amount distributed from Taxpayer A's IRA B. Taxpayer A was being treated for medical and emotional conditions, which impaired her ability to make financial decisions during this period. None of the funds distributed from IRA B were used and Taxpayer A attempted to rollover these funds shortly after the expiration of the 60-day period.

Therefore, based on the above facts and circumstances, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA B. Taxpayer A is granted a period of 60 days from the date of this ruling letter to complete the rollover of Amount D. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, said contribution will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the

Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact ***, at ***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Frances V Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437